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**JAYESH H. PANDYA V. SUBHTEX INDIA LTD :  
SUPREME COURT'S TROUBLING DECISION ON  
WAIVER OF RIGHT TO OBJECT**

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**CASE COMMENT**

**I. Introduction**

In August 2019, the Supreme Court (hereinafter ‘the Court’) pronounced a decision concerning termination of an arbitrator’s mandate.<sup>1</sup> It was the case of the petitioner (or ‘defendant’) that the arbitrator had failed to comply with the time-limit stipulated in the arbitration agreement for rendering the award and hence, in absence of an extension, the arbitrator had become *functus officio*.<sup>2</sup> In response, the respondent (or ‘claimant’) argued that the petitioner had failed to object to the contractual requirement without undue delay and thus, waiving its right to object as per Section 4 of the Arbitration and Conciliation Act, 1996 (hereinafter ‘1996 Act’). The Court came to the conclusion that the defendant had not waived its right to object and ultimately, terminated the mandate of the arbitrator. Through this case comment, the authors analyse the Court ruling. In light of the established jurisprudence on contractual interpretation and waiver of right to object in arbitration, the authors argue that the approach adopted by the Supreme Court in *Jayesh H. Pandya v. Subhtex India Ltd* lends a helping hand to obstructive behaviour in arbitration.

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<sup>1</sup> Jayesh H. Pandya v. Subhtex India Ltd., (2019) S.C.C. Online SC 1101.

<sup>2</sup> Arbitration and Conciliation Act, 1996, § 14(1)(a).

## II. Concept of 'Waiver' in Arbitration

Owing its origins to the principle of estoppel<sup>3</sup> and *venire contra factum proprium*,<sup>4</sup> waiver of the right to object is perhaps one of the most well-rooted equity-based principles.<sup>5</sup> The principle has been classified as a 'well-known general principle of law' in several civil legal systems as well.<sup>6</sup> It has traditionally been employed by the Courts to avoid prejudice and bias<sup>7</sup> that may be created due to untimely objections raised by a party.<sup>8</sup> Consequently, the principle forms a part of majority of the codified procedural rules on arbitration.<sup>9</sup> Most of the institutional rules and domestic legislation that recognize waiver have retained the language used in Article 4 of the UNCITRAL Model Law on Commercial Arbitration (hereinafter 'Model law').<sup>10</sup>

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<sup>3</sup> Phipps, (2007) 123 L.Q.R. 286; Motor Oil Hellas (Corinth) Refineries S.A. v. Shipping Corp of India, The Kanchenjunga, [1990] 1 Lloyd's Rep 391; Commonwealth of Australia v. Verwayen, (1990) 170 C.L.R. 394; Prosper Homes v. Hambro's Bank Executor Trustee Co., (1979) P. & C.R. 395, 401.

<sup>4</sup> Charles Richards Ltd. v. Oppenheim, [1950] 1 K.B. 616; A. G. GUEST AND SIR WILLIAM ANSON, ANSONS LAW OF CONTRACT, 523-527 (28<sup>th</sup> ed., Oxford University Press); Ram Chandra Rungta v. Ram Swarup Rungta, A.I.R. 2015 Cal. 24; K.S.R.T.C. v. M. Keshava Raju, A.I.R. 2004 Ker. 119.

<sup>5</sup> Duarte G. Henriques, *The role of good faith in arbitration: are arbitrators and arbitral institutions bound to act in good faith?*, 33(5) A.S.A. BULLETIN, 514-532 (2015); A. Newman, *Equity in Comparative Law*, (17)4 THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY, 807-848 (1968); Hessel E. Yntema, *Equity in the Civil Law and the Common Law*, 15(1/2) AMERICAN JOURNAL OF COMPARATIVE LAW, 60 (1960).

<sup>6</sup> Summary Record for meetings on the UNCITRAL Model Law on International Commercial Arbitration, Part III, 308<sup>th</sup> Meeting, June 4, 1985 413. available at: <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/308meeting-e.pdf>.

<sup>7</sup> Bridgette Toy-Cronin, *Waiver of the Rule Against Bias*, 9 AUCKLAND UNIVERSITY LAW REVIEW, 850 (2002).

<sup>8</sup> R. v. Nailsworth Licensing Justices Ex p. Bird, [1953] 2 All E.R. 652; Locabail (U.K.) Ltd. v. Bayfield Properties Ltd., [2000] Q.B. 451, 475.

<sup>9</sup> UNCITRAL Model Law on Commercial Arbitration, art. 4; UNCITRAL Arbitration Rules, art. 32; ICC Arbitration Rules, art. 40; ICSID Arbitration Rules, Rule 27; LCIA Arbitration Rules, art. 32.1; SCC Arbitration Rules, art. 36.

<sup>10</sup> *Id.*

The purpose of this provision has been identified as to prevent parties that are aware of a “*procedural defect in the arbitral process from raising it subsequently to resist the continuation of the arbitration or the enforcement of an adverse award made against it*”.<sup>11</sup> Courts in India and elsewhere have consistently affirmed the principle in cases where a party is aware of the breach at the time it occurs and has an opportunity to object to the breach.<sup>12</sup>

As is the case with the most jurisdictions, the provision in the Model law was retained by India in the 1996 Act under Section 4 without alterations.<sup>13</sup> The provision reads as:

“4. Waiver of right to object. —

*A party who knows that—*

*(a) any provision of this Part from which the parties may derogate, or*

*(b) any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.”*

While waiver may not be a readily discussed issue among commentators, Indian courts have substantial jurisprudence to offer on the nature and scope of Section 4 of the 1996 Act. With respect to the object of the provision, courts have often noted that “*it is intended to help the arbitration process function efficiently and in good faith*”.<sup>14</sup>

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<sup>11</sup> UNCITRAL 2012 Digest of Case Law on the Model Law on International Commercial Arbitration 35.

<sup>12</sup> *Bharat Sanchar Nigam Ltd. v. Motorola India Pvt. Ltd.*, (2009) 2 S.C.C. 337; *Narayan Prasad Lohia v. Nikunj Kumar Lohia*, A.I.R. 2002 S.C. 1139; *J.G. Engineer's Pvt. Ltd. v. Calcutta Improvement Trust*, A.I.R. 2002 S.C. 766; *S.N. Malhotra and Sons v. Airport Authority of India*, 149 (2008) D.L.T. 757.

<sup>13</sup> The Arbitration and Conciliation Act 1996, § 4.

<sup>14</sup> *Veena v. Seth Industries Limited*, 2010 S.C.C. Online Bom. 1648; *Ram Chandra Rungta v. Ram Swarup Rungta*, A.I.R. 2015 Cal. 24.

### III. Detailed Facts and Procedural History of the Case

The dispute arose out of a partnership agreement signed in 2000. The partnership agreement contained an arbitration clause. In 2003, the dispute arose out of the partnership agreement. The Bombay High Court (hereinafter ‘High Court’) appointed an arbitrator pursuant to an application made by the claimant. The defendant, who had alleged that the arbitration agreement was collusive and forged, filed a writ petition in the High Court against the order of appointment. The writ petition was eventually dismissed by the High Court as it held that the questions on existence and validity of the arbitration agreement could be raised before the arbitrator.<sup>15</sup> Against this order, the defendant filed a Special Leave Petition (hereinafter ‘SLP’) in the Court. Consequently, the Court stayed the arbitration proceedings till the disposal of the SLP.<sup>16</sup> While the appeal was still pending, the arbitrator appointed by the High Court passed away. Three years later, in 2007, the Court, dismissed the SLP and appointed a new arbitrator.<sup>17</sup>

In the arbitration agreement contained in the contract, parties had agreed, amongst other things, that the arbitrator will render his award within four months of date of service of the copy agreement. The agreement also provided that the mandate of the arbitrator can be extended with the consent of the parties.

The arbitration proceedings began on May 4, 2007 and the timeline of submissions was agreed. The arbitrator set August 10, 2007 as the date for making statements of admission and/or denials. After submission of documents, a second preliminary meeting was scheduled on August 13, 2007.

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<sup>15</sup> See Arbitration and Conciliation Act, 1996, § 16.

<sup>16</sup> *Jayesh H. Pandya v. Subhtex India Ltd.*, 2004 S.C.C. Online S.C. 10.

<sup>17</sup> *Jayesh H. Pandya v. Subhtex India Ltd.*, 2008 S.C.C. Online S.C. 36.

Pursuant to a request for a six-week extension made by the defendant in filing their written submission and eventual delay on the part of the parties, the arbitrator postponed the second preliminary meeting to August 27, 2007. In the second preliminary meeting, the defendant raised the issue of time-limit and argued that since the proceedings had commenced on May 04, 2007, the time limit to render the award according to the arbitration agreement was going to expire on September 04, 2007.

The defendant refused to extend the mandate of the arbitrator and argued for discontinuance of the proceedings. The arbitrator refused to discontinue the proceedings. The arbitrator was of the opinion that the objection regarding time-limit should have been raised earlier and the defendant should have communicated its intention to the arbitrator in the first preliminary meeting itself so that shorter time-frame could have been set. Against this, the defendant filed an application for termination of arbitrator's mandate in the High Court.<sup>18</sup>

The High Court took into account the facts and circumstances of the cases and ruled that the defendant had waived its right to object to the breach of time-limit by not objecting promptly.<sup>19</sup> On appeal, the Court ruled that the time-limit expressed in the arbitration agreement was final and binding and Section 4 was not applicable. Consequently, the Court terminated the mandate of the arbitrator.

#### **IV. Analysis of the Court's Judgment**

The Court rightly noted that the arbitrator had failed to render the award in the stipulated time-period in arbitration agreement.<sup>20</sup> It further remarked that an arbitrator is required to resolve the dispute according to terms of the arbitration agreement.<sup>21</sup> In a

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<sup>18</sup> The Arbitration and Conciliation Act, 1996, § 14.

<sup>19</sup> Jayesh H. Pandya v. Subhtex India Ltd., 2008 (5) Mah L.J. 749.

<sup>20</sup> *Supra* note 1, ¶ 14.

<sup>21</sup> *Id.*, ¶ 18.

scarcely worded ruling, the Court did throw light on the applicability of waiver under Section 4. It observed that the principle of waiver comes into act when there is a voluntary relinquishment of right.<sup>22</sup> It also noted that the principle of ‘deemed waiver’ finds support under Section 4 and any determination to that effect would be based on facts and circumstances of a case.<sup>23</sup> However, at this juncture the court took an odd turn and without analysing the circumstances in which the arbitral proceedings took place, it ruled that the parties and the arbitrator cannot derogate from the express terms of the contract i.e. the time-limit expressed in the arbitration agreement was final and binding.

The approach adopted by the Court raises several questions. While the court did take ‘waiver of right to object’ into consideration – a principle which formed the focal point of the High Court judgment, it based its ruling on a separate ground without evaluating the facts in the light of Section 4 of the 1996 Act. Further, by holding that express terms of the arbitration agreement are final and binding, the Court ignored (or perhaps, rejected) the idea that contractual terms can be altered, or, at least waived off,<sup>24</sup> through the subsequent conduct of the parties.<sup>25</sup>

Role of a judge in interpretation of a contract is to find the true intention of the parties.<sup>26</sup> Though, Indian approach on contractual interpretation tends to focus more on the express terms of the contract,<sup>27</sup> courts have frequently placed reliance on

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<sup>22</sup> P. Dasa Muni Reddy v. P. Appa Rao, (1974) 2 S.C.C. 725.

<sup>23</sup> *Supra* note 1, ¶ 20.

<sup>24</sup> I.N.G. Bank N.V. v. Ros Roca S.A., [2011] E.W.C.A. Civ. 353.

<sup>25</sup> Whitworth Street Estates (Manchester) Ltd. v. James Miller & Partner Ltd., [1970] A.C. 583; *Shewchuk v. Blackmount Capital Inc.*, 2016 O.N.C.A. 912.

<sup>26</sup> Patrick S. Ottinger, Principles of Contractual Interpretation, 3 LOUISIANA LAW REVIEW 60 (2000) ; Larry A. DiMatteo, *False Dichotomies in Commercial Contract Interpretation*, 11 (1) JOURNAL OF INTERNATIONAL TRADE LAW AND POLICY, 27-43 (2012).

<sup>27</sup> Nabha Power Limited v. Punjab State Power Corporation Limited, (2018) 11 S.C.C. 508.

the surrounding circumstances and the conduct of the parties to reach to a interpret the terms of the contract.<sup>28</sup> Further, Indian courts also acknowledge that contractual dynamics may shift and parties may contract out of the written terms through their conduct.<sup>29</sup> In context of the stipulated time in the contract, court have ruled that parties may give a ‘go-by’ to such stipulation by subsequent conduct.<sup>30</sup> The decision of the Court in the present case is a complete neglect for the established jurisprudence on the contractual interpretation based on parties’ conduct.

With respect to waiver, the importance of conduct of a party was emphasised by Denning LJ in *Charles Richards Ltd. v. Oppenheim*. In a much celebrated judgment, he pronounced: “*If the defendant as he did led the plaintiffs to believe that he would not insist on the stipulation as to time and that if they carried out the work he would accept it and they did it he could not afterwards set up the stipulation in regard to time against them. Whether it be called waiver or forbearance on his part or an agreed variation or substituted performance does not matter. It is a kind of estoppel by his conduct he made a promise not to insist on his strict legal rights.*”

Indian Courts have heavily relied on this King’s Bench ruling to determine the applicability of Section 4 of the 1996 Act.<sup>31</sup> According to the ruling, as long as the conduct of a party leads to other party in believing that it would not enforce its rights, waiver comes into picture. With respect to arbitration, it is often remarked that there is a contractual relationship between the parties and the arbitrator.<sup>32</sup> The Court has also affirmed this

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<sup>28</sup> *Khardah Company Ltd. v. Raymon & Co. (India) Private Ltd.*, (1963) 3 S.C.R. 183; *Pure Helium India Pvt. Ltd. v. Oil & Natural Gas Commission*, A.I.R 2003 S.C. 4519; *Godhra Electricity Co. Ltd. v. State of Gujarat*, 1975 (1) S.C.C. 199; *Hindustan Wires Ltd. v. R. Suresh*, 2013 S.C.C. Online Bom. 347.

<sup>29</sup> *Mcdermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 S.C.C. 181.

<sup>30</sup> *Id.*; *Arosan Enterprises Ltd. v. Union of India*, (1999) 9 S.C.C. 449

<sup>31</sup> See *Ram Chandra Rungta v. Ram Swarup Rungta*, A.I.R. 2015 Cal. 24; *K.S.R.T.C. v. M. Keshava Raju*, A.I.R. 2004 Ker. 119.

<sup>32</sup> PHILIPPE FOUCHARD, *Relationships between the Arbitrator and the Parties and the Arbitral Institution*, in ICC, *THE STATUS OF THE ARBITRATOR* 12, 21-23 (ICC

view.<sup>33</sup> Indeed, as parties agree to submit their dispute to an arbitrator, a certain contract is deemed to have been emerged.<sup>34</sup> Consequently, principles such as good faith and estoppel do apply between an party and the arbitrator. Even assuming an absence of such relationship between the party and the arbitrator, the general principles of good faith, estoppel and of course, waiver, do apply between the parties to the arbitration. Since, in the present case, the claimants never intended to discontinue the arbitral proceedings, it is rightfully entitled to argue on waiver on the part of the defendant.

Drafting history of Article 4 reveals that there were major concerns regarding interpretation of the provision.<sup>35</sup> Vague terms such as ‘without delay’ or ‘promptly’ were ultimately substituted.<sup>36</sup> Nevertheless, courts have interpreted ‘without undue delay’ to mean after a party gets aware of an irregularity, the objection must be raised in the next scheduled hearing or written submissions.<sup>37</sup> It is observed that that waiver is deemed to have taken place “*when a party, knowing that an irregularity has been committed, does not object and, instead, participates in the arbitration proceedings without protest*”.<sup>38</sup>

In a strikingly similar case where the mandate of the arbitrator was challenged on the ground that the time-limit to render the

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Ct. Bull. Spec. Supp. 1995) and ICC FINAL REPORT ON THE STATUS OF THE ARBITRATOR, 7(1) I.C.C. Ct. Bull. 27, 29 (1996).

<sup>33</sup> Voestapline Schienen Gmbh v. Delhi Metro Rail Corpn. Ltd., (2017) 4 S.C.C. 665.

<sup>34</sup> S.N.F. S.A.S. v. Chambre de Commerce Internationale, Paris Court of Appeal of 22 January 2009, XXIV Y.B. Comm. Arbitration 263 (2009).

<sup>35</sup> Summary Record for meetings on the UNCITRAL Model Law on International Commercial Arbitration, Part III, 308<sup>th</sup> Meeting, June 4, 1985 412-413. available at: <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/308meeting-e.pdf>.

<sup>36</sup> *Id.*

<sup>37</sup> CLOUT case No. 659 [Oberlandesgericht Naumburg, Germany, 10 Sch 08/01, 21 February 2002], <http://www.dis-arb.de/de/47/datenbanken/rspr/olg-naumburg-az-10-sch-08-01-datum-2002-02-21-id166>.

<sup>38</sup> K.S.R.T.C. v. M. Keshava Raju, A.I.R. 2004 Ker. 119; Mascon Multiservices and Consultants Pvt. Ltd. v. Bharat Oman Refineries Ltd., (2015) 7 Bom. L.R. 88.

award had come to an end, the Bombay High Court had ruled that the parties had waived their right to object as they failed to take ‘clear and unambiguous stand’ in front of the arbitrator with respect to enforcing time-limits.<sup>39</sup> The High Court in the said case also took into account the Court’s ruling in *N.B.C.C. Ltd. v. J.G. Engineering Pvt. Ltd.* (hereinafter ‘NBCC’) but distinguished it and rightly held that NBCC Ltd. had not laid down an absolute proposition.<sup>40</sup> Similarly, in another ruling, Bombay High Court took into account factors such as “agreeing to file pleadings and obtaining convenient time for bearing of the matter” for reaching the conclusion that the petitioner had waived off his right to object.<sup>41</sup>

At this juncture, it must be noted that it was the defendants who had requested for a six-week extension for filing their written statement. Owing to their request, the arbitrator had granted a two weeks extension. Courts have often relied on such conduct of the parties as an indication of waiver.<sup>42</sup> In *Sh. Bhupinder Singh Bindra v. Union of India*,<sup>43</sup> the court held that where a party had consented to adjournment and had contributed to dragging the proceedings, it could not have later argued that the mandate of the arbitration had been terminated on account of his failure to render the award within the contractual time-limit.<sup>44</sup> In another ruling, delay on the part of the parties to file their written submissions on time was held be an indisputable evidence that the parties had waived off their right to object the time-limit set out in the arbitration agreement.<sup>45</sup> Both Indian as well as English

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<sup>39</sup> *Snehdeep Auto Centre v. Hindustan Petroleum Corporation Ltd.*, (2012) 6 Mah. L.J. 344.

<sup>40</sup> *Id.*

<sup>41</sup> *Hindustan Wires Ltd. v. R. Suresh*, 2013 S.C.C. Online Bom. 347.

<sup>42</sup> *Sh. Bhupinder Singh Bindra v. Union of India*, (1995) 5 S.C.C. 329; *Hindustan Wires Ltd. v. R. Suresh*, 2013 S.C.C. Online Bom. 347.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Army Welfare Housing v. M/S Mathur & Kapare Associates Pvt Ltd.*, (2016) 235 D.L.T. 329.

courts have also ruled that a waiver can be implied<sup>46</sup> and where a party should have reasonably known that a breach of the arbitration agreement may be committed, it is deemed to have waived its right to object.<sup>47</sup> The series of foregoing decisions only strengthen the argument that the issue of waiver was improperly dealt by the Court.

While it may be argued that the arbitrator was at fault for ignoring the time-limit, it is worth remembering that the arbitration proceedings had been plagued with considerable delay and was stayed on account of pre-arbitral court interference. Defendant had filed several petitions in the High Court and the Court on the ground that the arbitration agreement was invalid causing considerable delay and finally, substitution of the initially appointed arbitrator. As the court dismissed the petition on account of competence-competence,<sup>48</sup> the defendant had finally reserved the jurisdictional objections to be contended before the arbitrator. It has been previously held that where a party intends to raise jurisdictional objections before the arbitrator, the time-limit stipulated under the arbitration agreement is deemed to be waived.<sup>49</sup> The Court ought to have looked into this aspect of the case. Additionally, the defendants insisted an extension of six weeks for filing written statement and played substantial part in the delay of the proceedings.

The fact that the Court does not choose to address the much-detailed judgment of the High Court is also perplexing. There are also several crucial facts that the Court neglected in its analysis of Section 4. For instance, it was admitted by the defendant's

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<sup>46</sup> *Waman Shrinivas Kini v. Ratilal Bhagwandas & Co.*, 1959 Supp (2) S.C.R. 21; *B.S.N.L. v. BPL Mobile Cellular Ltd.*, (2008) 13 S.C.C. 597; HUGH BEALE, *CHITTY ON CONTRACTS* 4-091 (32nd edn., Sweet and Maxwell); *Hughes v. Metropolitan Ry.*, (1877) 2 App. Cas. 439.

<sup>47</sup> *Reliance Industries Limited v. Union of India*, [2018] E.W.H.C. 822 (Comm).

<sup>48</sup> The Arbitration and Conciliation Act, 1996, § 16.

<sup>49</sup> *Mascon Multiservices and Consultants Pvt. Ltd. v. Bharat Oman Refineries Ltd.*, (2015) 7 Bom. L.R. 88.

counsel that the contention of time-limits should have been urged in the first preliminary meeting itself, however, owing to a miscommunication between the defendant and his counsel, the said contention was not raised.<sup>50</sup> Parties have a considerable say in deciding the time-frame of the proceedings.<sup>51</sup> In this case, the parties voluntarily agreed to a time-frame that practically nullified the time-limit set out in the arbitration agreement. With respect to the defendant, the overwhelming number of petitions filed by it before courts to delay the arbitral proceeding, its conduct during the arbitral proceeding as it sought six week extensions in an arbitration that it desired to be concluded be four months, and its decision to not object to the initial time-frame set by the arbitration ran inconsistent with their objection on the time-limits and made strong case for waiver.<sup>52</sup> Following the consistent jurisprudence on Section 4, it is safe to conclude that the parties waived their right to assert time-limit when they decided the timeline in the first meeting.

## V. The Court's Improper Reliance on NBCC Judgment

With respect to termination of the arbitrator's mandate, the court ruled that in absence of parties' consent, an arbitrator's mandate ends if it exceeds the stipulated time-limit for rendering the award in the contract. It seems a fairly correct observation as arbitrator's mandate depends on the terms of the arbitration agreement. However, the issue in present case was something else. The issue was whether the petitioners had waived off their right to object

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<sup>50</sup> Jayesh H. Pandya v. Subhtex India Ltd., 2008 (5) Mah L.J. 749.

<sup>51</sup> PETER ASHFORD, *Preliminary Meeting*, in Peter Ashford (ed.), HANDBOOK ON INTERNATIONAL COMMERCIAL ARBITRATION 234 (2d ed., 2014); Tishta Tandon, *Section 29A: Time-Bound Arbitration, Have Arbitral Tribunal Become the Organs of the Court*, 7 (2) INDIAN JOURNAL OF ARBITRATION LAW, 152 (2019).

<sup>52</sup> EDWARD FRY, A TREATISE ON THE SPECIFIC PERFORMANCE OF CONTRACTS 520 (6th edn., Sweet & Maxwell 2012); Karsondas Kalidas Ghia v. Chhotalal Moti Chand, (1924) I.L.R. 48 Bom. 259.

to the breach of the arbitration agreement. As discussed above, the Court sought to rely on its ruling in NBCC.<sup>53</sup>

However, court's reliance on NBCC is unfitting. In NBCC, the arbitration had been undergoing for over eight years.<sup>54</sup> The arbitrator did not only fail to dispose the matter within six months as ordered by the High Court, he could not publish the award even after his time period was extended twice by the parties. The court understood that after completion of the proceedings, there was no cogent reason for the delay caused. Hence, it was a case of an arbitrator's failure to act without undue delay as much as his termination of mandate. In NBCC, the Court took the less controversial route and ruled on the basis of terms of the contract. Either ways, the termination was justified. Thus, in effect, the court in NBCC did not lay down an absolute proposition.<sup>55</sup> Nor did the judgment rule out a contingency that conduct of the parties could mean that they do not intend to comply with the mandatory time limit.<sup>56</sup>

## VI. Conclusion

Arbitration's quick and efficient resolution is one of the many factors which makes it so popular in commercial contracts. It is remarked that "*the object of providing time limit for rendering an award by the arbitrator is aimed at expeditious resolution of the disputes rather than to leave the disputes unsettled or inconclusive on the expiry of the stipulated period*".<sup>57</sup> In the present case as well, parties included a four month period because at the time of concluding the agreement, they had intended a quick resolution of their disputes. However, it is frequently seen how the same parties that desire a quick resolution of dispute at the time of signing of the contract often resort to

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<sup>53</sup> N.B.C.C. Ltd. v. J.G. Engineering Pvt. Ltd., Civil Appeal No. 8 of 2010.

<sup>54</sup> *Id.*

<sup>55</sup> Snehdeep Auto Centre v. Hindustan Petroleum Corporation Ltd., (2012) 6 Mah. L.J. 344.

<sup>56</sup> *Id.*

<sup>57</sup> Shyam Telecom Ltd. v. Arm Ltd., (2004) 77 D.R.J. 91.

delaying tactics after finding themselves on the wrong side of the dispute.<sup>58</sup> This case is a perfect example of how the same time limits that are included for quick resolution can be used to sabotage the arbitral proceedings.

In the past few years, the approach of Indian Courts towards arbitration has taken turns. Courts are frequently adopting an approach which supports arbitration and ensures its efficiency. There have also been efforts by both the legislature as well the judiciary to ensure quick resolution of disputes. However, this proactive role approach has also created some complications. Problems created by insertion of Section 29A<sup>59</sup> indicates that legislative changes may not be the solution and reinforces the belief that efficiency and integrity of the arbitral process is heavily dependent on the courts. Thus, between the leaps and bounds of the so-called 'pro-arbitration' approach, parties must not be allowed to take undue benefit of the contractual arrangement or the provisions of the Act. It could be achieved by taking into account the circumstances of the case the respective good faith of the parties. The Court has earlier opined that being commercial contracts, arbitration agreements should not be construed with a purely legalistic mindset.<sup>60</sup> As this case shows, a straitjacket approach in favour of the rigid contractual adherence does produce undesirable results.

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<sup>58</sup> Chandok Machineries v. S.N. Sunderson & Co., 2018 S.C.C. Online 11000; Johan Steyn, Remedies Against the Reluctant Respondent: The Position Under English Law, 5 (3) ARBITRATION INTERNATIONAL, 294-299 (1989); Cedric Harris, *Abuse of the Arbitration Process-Delaying Tactics and Disruptions – A Respondent's Guide*, 9 (2) JOURNAL OF INTERNATIONAL ARBITRATION, 7-92 (1992); J. Martin H. Hunter and Jan Paulsson, 'A Code of Ethics for Arbitrators in International Commercial Arbitration', 13 INT'L BUSINESS LAWYER, 153-160 (1985).

<sup>59</sup> Manini Brar, *Implications of the New Section 29A of the Amended Indian Arbitration and Conciliation Act, 1996*, 5 (2) INDIAN JOURNAL OF ARBITRATION LAW, 113-128 (2017); Tishta Tandon, *Section 29A: Time-Bound Arbitration, Have Arbitral Tribunal Become the Organs of the Court*, 7 (2) INDIAN JOURNAL OF ARBITRATION LAW, 146-160 (2019).

<sup>60</sup> Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 S.C.C. 1.

